

DRAFT BOOK DISPATCH

TO : Chiefs of Station and Base
FROM : Chief, [REDACTED]
SUBJECT: Overtime Provisions of Fair Labor Standards Act

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1. PL 93-259, 8 April 1974, amended the Fair Labor Standards Act (FLSA) of 1938 and brought all Federal agencies under the Act. The effective date was 1 May 1974.

2. The overtime provisions of the Act as amended apply to all employees who are not designated as exempt. Managers or supervisors who plan work, assign work, review results, and rate employees are exempt. Administrative and professional employees, other than clerical and technical, above GS-8 are in most cases exempt. Most technical employees above GS-12 are exempt. All clerical employees, including secretaries (unless supervisors), and administrative, professional and technical employees up to the grades noted above, unless supervisors, are non-exempt.

3. All Organization employees have been designated exempt or non-exempt consistent with the above rules. Employees in the United States will be individually notified of their designation. While all employees in foreign areas are exempt, even though their position is non-exempt in nature, upon their return to Headquarters PCS or TDY they will be notified of their exempt/non-exempt designation. A record of the designation, and of any subsequent designation in connection with reassignments, will be placed in the employee's personnel folder at Headquarters.

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4. Overtime for non-exempt employees must be paid for all hours actually worked over 40 in a week including any which the employer suffers or permits to be performed, even though not officially ordered or approved. Non-exempt employees must be paid for overtime worked; compensatory time normally may not be substituted. If during a workweek a non-exempt employee performs any work in the United States or its territories, all overtime work performed during that workweek, whether in the United States or in a foreign area, is qualified for overtime payment under the Fair Labor Standards Act.

5. The overtime rate for a non-exempt employee is not less than one and one-half times the employee's regular rate of pay, which is determined by including such additional payments as night differential, Sunday premium pay, environmental differential or hazard pay, and certain post differentials (other than foreign). For overtime purposes, a non-exempt employee is entitled to the higher of the amounts due under applicable pay laws for each workweek. This means that, when overtime is worked, the employee's pay must be computed on a weekly basis under present rules and under the FLSA, with the higher amount being paid.

6. An employee who is exempt only because serving in a foreign area will be non-exempt during a period of TDY in our country unless the job performed during TDY is in the exempt category. The component for which TDY is performed is responsible for ensuring that any overtime worked is correctly compensated, but an employee who knows or presumes that he is non-exempt may wish to call attention to this fact when reporting for TDY.

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